

ENTERED

October 20, 2020

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ESTATE OF SHELLEY	§	CIVIL ACTION NO.
MOTT, DECEASED;	§	4:18-cv-04213
STEPHANIE SMITH;	§	
HIRAM MOTT; AND	§	
GLENDIA MOTT,	§	
Plaintiffs,	§	
	§	
	§	
vs.	§	JUDGE CHARLES ESKRIDGE
	§	
	§	
FCA US LLC;	§	
CHRYSLTER GROUP,	§	
LLC; FABTECH	§	
INDUSTRIES, INC, <i>et al</i> ,	§	
Defendants.	§	

**ORDER ADOPTING
MEMORANDUM AND RECOMMENDATION**

Before the Court are several rulings by Magistrate Judges Nancy Johnson and Sam Sheldon. Dkts 199, 235. All objections are overruled.

The district court conducts a *de novo* review of those conclusions of a magistrate judge to which a party has specifically objected. See 28 USC § 636(b)(1)(C); *United States v Wilson*, 864 F2d 1219, 1221 (5th Cir 1989). To accept any other portions to which there is no objection, the reviewing court need only satisfy itself that no clear error appears on the face of the record. See *Guillory v PPG Industries Inc*, 434 F3d 303, 308 (5th Cir 2005), citing *Douglass v United Services Automobile Association*, 79 F3d 1415, 1420

(5th Cir 1996); see also FRCP 72(b) Advisory Comm Note (1983).

As to the order by Magistrate Judge Johnson. Magistrate Judge Johnson entered a minute order resolving eleven various motions. Dkt 199. Plaintiffs filed a timely objection to three of those rulings. Dkt 203. Defendants FCA US LLC and Fabtech Industries, Inc filed responses urging adoption of the order of the Magistrate Judge in full. Dkts 207, 208.

Plaintiffs object to the granting of the underlying joint motion to compel testing, arguing that the testing is unnecessary and expensive. Dkt 203 at 7–8. Plaintiffs also object to the denial of their motion to compel production from FCA on the ground that FCA dumped undifferentiated documents into a repository of unrelated documents, making it difficult for Plaintiffs to find relevant documents. *Id.* at 10. Plaintiffs further object to the denial of their motion to compel a scheduling order, arguing that the case is over five years old, and they would like to proceed to trial. *Id.* at 11.

The Court has reviewed the pleadings, the record, the applicable law, and the objections. The Court has also reviewed *de novo* the minute order of the Magistrate Judge. The Court finds that the objections of Plaintiffs lack merit. No other clear error appears.

As to the Memorandum and Recommendation by Magistrate Judge Sheldon. Magistrate Judge Sheldon entered a Memorandum and Recommendation to resolve a motion by Plaintiffs for partial summary judgment for resolution of liability against Defendants. He recommended denying the motion. Dkt 235 at 11.

Plaintiffs filed a timely objection. Dkt 237. They object to the Memorandum and Recommendation, arguing that it fails to consider the “gross inadequacies of the Defendants Expert Theories.” *Id.* at 1. Plaintiffs assert that the “improperly supported speculative theories” should have resulted in the

Magistrate Judge granting the motion for partial summary judgment. *Id.* at 2.

FCA and Fabtech filed responses urging adoption in full. Dkts 254, 256. FCA responds that Plaintiffs failed to satisfy the summary judgment standard—and indeed, that Plaintiffs go so far as to insist “that their retained experts’ opinions are somehow entitled to additional or greater weight, effectively trumping and/or entirely disproving the facts, evidence, and opinions offered by defense experts.” Dkt 254 at 6. Fabtech responds that Plaintiffs waived their right to attack and exclude evidence from Defendants’ experts. Dkt 256 at 5. This is so, they say, because a previous motion by Plaintiffs to strike experts was denied, and any objections to that denial are untimely. *Ibid.*

The Court has reviewed the pleadings, the record, the applicable law, and the objections. The Court has also reviewed *de novo* the recommendation of the Magistrate Judge. The Court finds that the objection of Plaintiffs lacks merit. No other clear error appears.

IT IS ORDERED:

The objection of Plaintiffs to the minute order of Magistrate Judge Johnson is OVERRULED. Dkt 203.

The minute order is ADOPTED as the Order of this Court. Dkt 199.

The joint motion by Defendants to compel testing is GRANTED. Dkt 162.

The motion by Plaintiffs to compel production by FCA is DENIED. Dkt 192.

The motion by Plaintiffs to compel scheduling order is DENIED. Dkt 191.

The objection of Plaintiffs to the Memorandum and Recommendation of Magistrate Judge Sheldon is OVERRULED. Dkt 237.

The Memorandum and Recommendation is ADOPTED as the Memorandum and Order of this Court. Dkt 235.

The motion by Plaintiffs for partial summary judgment is DENIED. Dkt 94.

The motion by Plaintiffs to file a reply is GRANTED. Dkt 140.
SO ORDERED.

Signed on October 20, 2020, at Houston, Texas.

A handwritten signature in black ink, reading "Ch R Eskridge II". The signature is written in a cursive, stylized font. The "Ch" is connected to "R", which is connected to "Eskridge". There are two vertical strokes at the end, representing the Roman numeral "II".

Hon. Charles Eskridge
United States District Judge